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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Crl.Rev.Pet.No. 1387 of 2007(E)

C.C. NO. 949 OF 2003 OF THE J.M.F.C.-I, KOTTAYAM

REVN. PETITIONER: DEFACTO COMPLAINANT

TOMCY MICHAEL, S/O.MICHAEL,
PUTHUPPALLYMATTOM HOUSE, MYLADI, PAMPADY,
KOTTAYAM DIST.

BY ADV. SRI.SUNIL CYRIAC

RESPONDENTS: ACCUSED & STATE

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1. T.C.MATHEW, S/O.CHANDY, THANNIPPARA
VEEDU, PULIKKALKAVALA BHAGAM, VAZHOOR VILLAGE,
VAZHOOR P.O., KOTTAYAM DISTRICT.

2. T.C.THOMAS, S/O.CHANDY, THANNIPPARA
VEEDU, 14TH MILE BHAGAM, VAZHOOR VILLAGE,
VAZHOOR P.O., KOTTAYAM DISTRICT.

3. FRANCIS, S/O.CHANDY, THANNIPPARA
VEEDU, 14 MILE BHAGAM, VAZHOOR VILLAGE,
VAZHOOR P.O., KOTTAYAM DISTRICT.

4. PHILIP, S/O.CHANDY, THANNIPPARA VEEDU,
NEAR M.G.M. HIGH SCHOOL, PAMPADY VILLAGE,
PAMPADY P.O., KOTTAYAM DISTRICT.

5. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOKEN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10-07-2007 THE COURT ON 16/07/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.Rev. No.1387 of 2007

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Dated, this the 16th day of July 2007

ORDER

In this Revision filed under Sections 397 and 401 Cr.P.C. the revision petitioner who is the de facto complainant in Crime No. 151 of 2003 of Pampadi Police Station for offences punishable under Sections 451, 294 (b() and 506 (i) read with Sec. 34 I.P.C., challenges the judgment dated 5-7-2006 passed by the J.F.C.M.-I, Kottayam in C.C. 949 of 2003, acquitting the accused of the offences punishable under Sections 294 (b) and 506 (i) I.P.C.

2. I heard both sides. The learned counsel appearing for the respondents/accused did not challenge the conviction entered and the sentence of fine passed against them for the offence punishable under Sec. 448 I.P.C. as against the charge under Section 451 I.P.C.

3. The learned counsel appearing for the revision petitioner made the following submissions before me in support of the revision:-

Eventhough the learned Magistrate has held that P.Ws 1 and 2 who are the de facto complainant and his father are trustworthy, the accused have been acquitted of the offence punishable under Sec. 294 (b) I.P.C. stating that both the above witnesses did not say that they were annoyed at the accused calling them obscene words. This view of the court below is not correct since P.W.1 has stated that hearing the words of the accused he felt distress (മനോവിഷമം തോന്നി). Similarly, the accused were acquitted of the offence punishable under Sec. 506 (i) I.P.C. by holding that P.Ws 1 and 2 have not stated that they felt fear on account of the conduct of the accused. A reading of the definition of "criminal intimidation" under Sec. 503 I.P.C. will show that a feeling of fear is not insisted upon by law.

4. While in the case of Section 294 (b) I.P.C., I am afraid that I cannot agree with the above submissions, in the case of 506 (i) I.P.C. I see some force in the submission made on behalf of the revision petitioner.

5. In order to constitute the offence under Section 294 (b) I.P.C. the utterance of obscene words should be in or near any public place and that too to the annoyance of others. Strictly understood, the word **(**മനോവിഷമം**)** is "mental distress" and the appropriate vernacular synonym for annoyance is **(**അസഹ്യത, അലട്ടൽ, ശല്ല്യം or ഉപദ്രവം**).** Even assuming that the word (മനോവിഷമം **)** could be treated as annoyance, the utterance of the obscene words should be in or near any public place. The evidence on record shows that the place of occurrence is not in or near any public place, but is on the varandah of the house of P.W.1. The said property of P.W.1 is not abutting any road, street, way or other thoroughfare nor is it situated inside or near a place which could be called a public place. Unlike a private property, a public place is one over which the public have a right of access. Hence, the learned Magistrate was perfectly justified in acquitting the accused of the offence punishable under Section 294 (b) I.P.C.

6. With regard to the offence punishable under Section 506 (i) I.P.C. apart from the fact that Sec. 503 I.P.C. which defines "criminal intimidation" does not insist that the victim should experience fear on account of the criminal intimidation, the evidence of P.W.1 shows that the accused trespassed into his house calling filthy words and uttering that they will kill him the 2nd accused caught hold of the neck of P.W.1. P.W.2 also says that the accused had uttered that they will kill P.W.1 and then hang him. So saying the

accused rushed towards P.W.1. This is sufficient to engender fear in the minds of P.Ws 1 and 2. The learned Magistrate does not appear to have focused his attention to this aspect of the matter. Upholding the acquittal of the accused under Section 294 (b) I.P.C. the judgment dated 5-7-2006 of the J.F.C.M. Kottayam in C.C. 947 of 2003 is set aside and remanded to that court for re-consideration with regard to the offence punishable under Section 506 (i) I.P.C. The conviction and sentence under Section 448 I.P.C. is not interfered with.

In the result, this Revision Petition is allowed in part as above.

V. RAMKUMAR, JUDGE.

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